

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RICHARD GOSZTYLA,
Plaintiff,

v.

AULD, et al.,
Defendants.

No. 2:22-cv-01276-EFB (PC)

ORDER

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. In addition to filing a complaint (ECF No. 1), he has also filed an application to proceed in forma pauperis (ECF No. 2).

Application to Proceed In Forma Pauperis

The court has reviewed plaintiff's application and finds that it makes the showing required by 28 U.S.C. § 1915(a)(1) and (2). Accordingly, by separate order, the court directs the agency having custody of plaintiff to collect and forward the appropriate monthly payments for the filing fee as set forth in 28 U.S.C. § 1915(b)(1) and (2).

Screening Requirements

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally

1 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek
2 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

3 A claim “is [legally] frivolous where it lacks an arguable basis either in law or in fact.”
4 *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *Franklin v. Murphy*, 745 F.2d 1221, 1227-28 (9th
5 Cir. 1984). “[A] judge may dismiss [in forma pauperis] claims which are based on indisputably
6 meritless legal theories or whose factual contentions are clearly baseless.” *Jackson v. Arizona*,
7 885 F.2d 639, 640 (9th Cir. 1989) (citation and internal quotations omitted), *superseded by statute*
8 *on other grounds as stated in Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000); *Neitzke*, 490
9 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully pleaded,
10 has an arguable legal and factual basis. *Id.*

11 “Federal Rule of Civil Procedure 8(a)(2) requires only ‘a short and plain statement of the
12 claim showing that the pleader is entitled to relief,’ in order to ‘give the defendant fair notice of
13 what the . . . claim is and the grounds upon which it rests.’” *Bell Atl. Corp. v. Twombly*, 550 U.S.
14 544, 555 (2007) (alteration in original) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)).
15 However, in order to survive dismissal for failure to state a claim, a complaint must contain more
16 than “a formulaic recitation of the elements of a cause of action;” it must contain factual
17 allegations sufficient “to raise a right to relief above the speculative level.” *Id.* (citations
18 omitted). “[T]he pleading must contain something more . . . than . . . a statement of facts that
19 merely creates a suspicion [of] a legally cognizable right of action.” *Id.* (alteration in original)
20 (quoting 5 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* ' 1216 (3d ed.
21 2004)).

22 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to
23 relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl.*
24 *Corp.*, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual content
25 that allows the court to draw the reasonable inference that the defendant is liable for the
26 misconduct alleged.” *Id.* (citing *Bell Atl. Corp.*, 550 U.S. at 556). In reviewing a complaint
27 under this standard, the court must accept as true the allegations of the complaint in question,
28 *Hospital Bldg. Co. v. Rex Hosp. Trs.*, 425 U.S. 738, 740 (1976), as well as construe the pleading

1 in the light most favorable to the plaintiff and resolve all doubts in the plaintiff's favor, *Jenkins v.*
 2 *McKeithen*, 395 U.S. 411, 421 (1969).

3 Screening Order

4 Plaintiff's complaint alleges the following: For a period of time, plaintiff refused to be
 5 tested for Covid. ECF No. 1 at 3. Plaintiff believed that the testing was not being done in a safe
 6 and hygienic manner and feared a false positive test would result in his placement in a
 7 gymnasium full of sick inmates. *Id.* A sign reading "Failure to Test - 21 Day Medical
 8 Quarantine Required," was placed on his door. *Id.* at 3, 8. Plaintiff claims the 21-day quarantine
 9 period was "excessive" and "punitive." *Id.* at 4. He further claims that the sign on his door put
 10 him in "harm's way by making [him] a target to the rest of the inmate population." *Id.* Plaintiff
 11 has since complied with the testing requirement but only because he feared repercussions if he did
 12 not. *Id.* He also claims that he is tested too frequently. *Id.* From these allegations, plaintiff
 13 asserts the following claims: a violation of his right to privacy as established by the Health
 14 Insurance Portability and Accountability Act ("HIPAA"), violations of his rights under the Eighth
 15 Amendment, and a due process violation under the Fourteenth Amendment. *Id.* at 3, 4, 5. For the
 16 reasons stated below, the complaint fails to state a claim upon which relief could be granted.

17 As an initial matter, the court notes that there is no basis for a claim under HIPAA or the
 18 due process clause of the Fourteenth Amendment. Plaintiff cannot state a claim under HIPAA
 19 because HIPAA does not provide a private right of action. *See Webb v. Smart Document*
 20 *Solutions, LLC*, 499 F.3d 1078, 1081 (9th Cir. 2007). Further, plaintiff has not alleged he was
 21 deprived of a property or liberty interest that is protected by the Due Process Clause. *See Walker*
 22 *v. Gomez*, 370 F.3d 969, 973 (9th Cir. 2004); *Vignolo v. Miller*, 120 F.3d 1075, 1077 (9th Cir.
 23 1997). The court cannot discern a basis for any due process claim on the facts alleged here.

24 As for the Eighth Amendment claim, it appears to be based on the allegations that (1) the
 25 posting on plaintiff's cell door coerced him to take the Covid tests, which are being administered
 26 too frequently; and (2) the 21-day quarantine was excessive. This court concurs with another
 27 magistrate judge in this court who previously screened out nearly identical allegations for failure
 28 to state a claim:

1 **a. Coercion to Test**

2 To state an excessive force claim, plaintiff must allege facts showing that
3 he was subjected to excessive physical force that was applied “maliciously and
4 sadistically to cause harm” rather than “in a good-faith effort to maintain or restore
5 discipline.” *Wilkins v. Gaddy*, 559 U.S. 34, 37 (2010) (per curiam) (internal
6 quotation omitted).

7 Plaintiff fails to state a claim for a number of reasons. Plaintiff fails to
8 show that the cell door posting regarding his refusal to take a COVID test was
9 done maliciously to coerce him to take the test rather than for the legitimate
10 purpose of protecting correctional officers and others. Nor has plaintiff shown the
11 testing itself amounted to excessive force. Plaintiff does not explain just what the
12 tests entailed. At least one court has approved testing as invasive as a deep nasal
13 swab. *See Wilcox v. Lancour*, No. 2:20-cv-0183, 2021 WL 230113 (W.D. Mich.
14 Jan. 22, 2021).

15 Courts have held that prisons have legitimate reasons to conduct regular
16 testing or prisoners for COVID-19. As explained recently by a Nebraska district
17 court:

18 [T]here can be little doubt that Defendants in the instant case had a
19 legitimate penological purpose in testing the prison population for
20 the SARS-CoV-2 virus. In the context of an Eighth Amendment
21 challenge to precautions taken by a federal prison in the face of the
22 COVID-19 pandemic, the Sixth Circuit has held that COVID-19
23 poses a substantial risk of serious harm to prison inmates, given the
24 substantial risk of contagion to those housed in close-contact
25 situations, such as prisons, as well as the serious risks to health and
26 life when the disease is contracted. *See Wilson v. Williams*, 961 F.3d
27 829, 840 (6th Cir. 2020) (recognizing the seriousness of both the
28 transmissibility of COVID-19 in the prison setting and the health
risks to individuals who contract the disease). Under these
circumstances, Defendants had a legitimate—indeed compelling—
governmental interest in testing all prisoners for the presence of the
SARS-CoV-2 virus, in order to meet its obligations to control
contagion and to protect its other prisoners and staff. *See Jolly v.*
Courghlin, 76 F.3d 468, 477 (2d Cir. 1996) (holding that a prison had
a compelling state interest in mandatory tuberculosis testing); *Dunn*
v. White, 880 F.2d 1188, 1195 (10th Cir. 1989) (holding that a prison
had a legitimate penological interest in ascertaining the extent of
contagion that justified coercive blood testing for AIDS); *Wilson v.*
Wilkinson, 608 F. Supp. 2d 891 (S.D. Ohio 2007) (upholding state
statute requiring mandatory DNA testing of prisoners against Fourth
Amendment challenge); *see also McDougald v. Stone*, No. 1:17-cv-
72, 2017 WL 8222430, at *5 (S.D. Ohio Aug. 22, 2017) (finding
legitimate penological interest in mandatory blood-draw of prisoner
who spit on officer).

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2 *Webb v. Johnson*, No. 4:21-cv-3042, 2021 WL 2002712, at *6 (D. Neb. May 19, 2021).

3
4 Plaintiff fails to allege facts showing frequent COVID-19 testing was
5 conducted maliciously and sadistically to cause harm or that he, in fact, suffered any
6 harm from being required to test. While this court finds it very unlikely plaintiff can
7 state a claim cognizable under § 1983 based on any coercion resulting from the
8 posting, he will be permitted to amend his complaint to attempt to do so.

9
10 **b. Length of Quarantine**

11 Plaintiff's claim that a 21-day rather than a 14-day quarantine amounted to
12 excessive punishment in violation of the Eighth Amendment does not amount to a
13 cognizable claim under § 1983. Plaintiff fails to allege facts sufficient to show that
14 the additional seven days in quarantine amounted to an "excessive risk of harm to
15 his health or safety." *Cervantes v. Adams*, 507 F. App'x 644 (9th Cir. 2013) (citing
16 *See Farmer v. Brennan*, 511 U.S. 825, 837 (1994)). Further, plaintiff does not
17 provide any facts showing that defendants were responsible for the length of his
18 quarantine. While, again, this court finds it unlikely plaintiff can state a claim
19 regarding the length of his quarantine, he will be permitted to attempt to do so in
20 any amended complaint.

21 *Fialho v. Auld*, No. 2:21-cv-1698-KJM-DB (E.D. Cal.), ECF No. 13 at 5-6.

22 Leave to Amend

23 Plaintiff's complaint is dismissed with leave to amend. If plaintiff chooses to file an
24 amended complaint it should observe the following:

25 Any amended complaint must identify as a defendant only persons who personally
26 participated in a substantial way in depriving him of a federal constitutional right. *Johnson v.*
27 *Duffy*, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation of a
28 constitutional right if he does an act, participates in another's act or omits to perform an act he is
legally required to do that causes the alleged deprivation). The complaint should also describe,
in sufficient detail, how each defendant personally violated or participated in the violation of his
rights. The court will not infer the existence of allegations that have not been explicitly set forth
in the amended complaint.

The amended complaint must contain a caption including the names of all defendants.
Fed. R. Civ. P. 10(a).

1 Plaintiff may not change the nature of this suit by alleging new, unrelated claims. See
2 *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007).

3 Any amended complaint must be written or typed so that it so that it is complete in itself
4 without reference to any earlier filed complaint. E.D. Cal. L.R. 220. This is because an amended
5 complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the
6 earlier filed complaint no longer serves any function in the case. See *Forsyth v. Humana*, 114
7 F.3d 1467, 1474 (9th Cir. 1997) (the “amended complaint supersedes the original, the latter
8 being treated thereafter as non-existent.”) (quoting *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir.
9 1967)).


10 Finally, the court notes that any amended complaint should be as concise as possible in
11 fulfilling the above requirements. Fed. R. Civ. P. 8(a). Plaintiff should avoid the inclusion of
12 procedural or factual background which has no bearing on his legal claims.

13 Conclusion

14 Accordingly, IT IS HEREBY ORDERED that:

- 15 1. Plaintiff’s application to proceed in forma pauperis (ECF No. 2) is GRANTED;
- 16 2. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected
17 in accordance with the notice to the California Department of Corrections and
18 Rehabilitation filed concurrently herewith;
- 19 3. Plaintiff’s complaint (ECF No. 1) is DISMISSED with leave to amend within 30
20 days of service of this order; and
- 21 4. Failure to comply with this order may result in dismissal of this action.

22 DATED: September 22, 2022.

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25 EDMUND F. BRENNAN
26 UNITED STATES MAGISTRATE JUDGE
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